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April 24, 2020

VIA ECF AND EMAIL
(FAILLA.NYSDCHAMBERS@NYSD.USCOURTS.GOV)

Honorable Katherine Polk Failla, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007

MEMO ENDORSED

Re: Wells v. The Achievement Network, et al.
Case No. 1:18-CV-06588 (KPF)

Dear Judge Failla:

This firm represents Defendants in connection with the above-referenced matter. We submit this joint letter with the consent of counsel for Plaintiff Sharon Wells (“Plaintiff”) pursuant to Rules 9 (B) and (C) of Your Honor’s Individual Practices to request permission to file certain documents entirely under seal, and to file certain other documents on the public docket, with portions redacted and to file the unredacted versions under seal in connection with Defendants’ Motion for Summary Judgment.

Documents Defendants Request to File Completely Under Seal

We enclose for the Court’s consideration a copy of the documents we request to file completely under seal, attached hereto as Exhibit “A.” These documents include:

- A proposal The Achievement Network, Ltd. (“ANet”) submitted to the Syracuse City School District for the 2017-2018 school year, which was produced to Plaintiff during the course of discovery marked CONFIDENTIAL and Bates Stamped D001502-001507, attached as Exhibit “NN” to the Declaration of Wendy J. Mellk, Esq. in Support of Defendants’ Motion for Summary Judgment, dated May 4, 2020 (“Mellk Decl.”).



- An e-mail correspondence from Alyssa McKeon to Ms. Cockrell, dated March 23, 2018, which was produced to Plaintiff during the course of discovery marked CONFIDENTIAL and Bates Stamped D001500-001501, attached as Exhibit "PP" to the Mellk Decl.

Defendants designated Exhibits "NN" and "PP" to the Mellk Decl. as "Confidential" pursuant to the Stipulation and Proposed Protective Order entered by the Court on November 21, 2019. The information sought to be sealed is confidential business information of ANet relating to the revenue of ANet's partnership with the Syracuse City School District.

Documents Defendants Request to File Partially Under Seal

Defendants further enclose for the Court's consideration copies of the documents Defendants request permission to file partially under seal, attached hereto as Exhibit "B." These documents include:

- Confidential portions of the deposition of Plaintiff, dated January 7, 2020 and January 23, 2020, attached as Exhibit "C" to the Mellk Decl., including:
 - Pages 379-385, which discuss confidential business information relating to the revenue of ANet's partnership with the Syracuse City School District.
- Confidential portions of the deposition of Teimosa Martin, dated January 31, 2020, attached as Exhibit "D" to the Mellk Decl., including:
 - Pages 92-96 and Pages 102-104, which discuss confidential business information relating to the revenue of ANet's partnership with the Syracuse City School District.

Notwithstanding the presumption of public access to judicial records, documents may be kept under seal if "countervailing factors" in the common law framework or "higher values" so demand. Lugosch v. Pyramid Co., 435 F.3d 110, 124 (2d Cir. 2006). In particular, courts may deny access to records that are sources of business information that might harm a litigant's competitive standing. See Encyclopedia Brown Prods. v. Home Box Office, 26 F. Supp. 2d 606, 612 (S.D.N.Y. 1998).

When the interest in preserving financial privacy and protecting confidentiality of certain proprietary documents outweighs the public's interest in disclosure, an order granting the parties' requests to seal is appropriate. See Ruiz v. Citibank, N.A., 93 F. Supp. 3d 279, 301 (S.D.N.Y. Mar. 19, 2015) (granting redactions to defendant's manuals and training materials noting the privacy interest outweigh public interest in disclosure).

The information contained in the above-referenced documents is highly proprietary, was produced on a confidential basis pursuant to the Court's So-Ordered Stipulation



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of Confidentiality, and has been shielded from disclosure. If made available as a matter of public record, and if ANet's competitors had access to such information, ANet would be competitively harmed. In light of the parties' joint request and narrow tailoring of the proposed redactions, we respectfully request the Court grant the parties' request to file these limited documents under seal given the proprietary nature of the information outweighs the presumption of public access. See Playtex Prods., LLC v. Munchkin, Inc., No. 14-CV-1308 (RJS), 2016 U.S. Dist. LEXIS 42261, at *40-41 (S.D.N.Y. Mar. 29, 2016).

Defendants further request to the extent any text contained in the parties' 56.1 Statement of Undisputed Material Facts responses thereto, or Memoranda of Law refer specifically to the confidential information referenced in Exhibits "A" and "B" to this application, that such text may also be filed in partially redacted form under seal.

Thank you for your consideration of this matter. Please do not hesitate to contact us should you require any further information.

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Tania J. Mistretta
Tania J. Mistretta

Enclosures

cc: Damon McDougal, Esq.
Wendy J. Mellk (JL)

Application GRANTED. Defendants are authorized to file under seal, viewable to the Court and parties only, the exhibits specified in the underlying letter. Defendants are directed to file redacted versions of the exhibits on the public docket and electronically filed unredacted versions under seal.

Dated: April 24, 2020
New York, New York

SO ORDERED.

A handwritten signature in blue ink that reads "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE